

# Disciplinary and Other NASD Actions

## REPORTED FOR AUGUST

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of July 2004.

### Firms Suspended, Individuals Sanctioned

**First Geneva Securities, Inc. (CRD #47000, San Diego, California) and Roland Lee Chapin (CRD #2494038, Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$100,000 jointly and severally with Chapin, and suspended from writing or contributing to the preparation of any research report for six months. Following the suspension, the firm is required to submit any research reports prepared by or for the firm to NASD's Advertising Department for approval prior to any report's distribution to the public for a period of two years. Chapin is suspended from association with any NASD member in any capacity for 60 days, and suspended from writing or contributing to the preparation of any research report for six months.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Chapin, knew, or should have known, of omitted facts in research reports, and, at a minimum, was reckless in failing to include them in research reports. The findings also stated that Chapin knew, or should have known, that a disclaimer in a research report failed to mention that the firm held shares for the co-author of the report. NASD also found that the firm, acting through Chapin, failed to establish and maintain a system to supervise the activities of the firm with respect to research reports. In addition, NASD determined that no one at the firm was given the responsibility to supervise Chapin's preparation of the reports or to review the reports to ensure that they complied with NASD rules and federal securities laws. Furthermore the findings stated that no system was in place at the firm with regard to research reports generally, and no one at the firm supervised adequately Chapin's preparation of the reports or reviewed Chapin's work for compliance.

The firm's suspension from writing or contributing to the preparation of any research report began August 2, 2004, and will conclude at the close of business February 1, 2005. Chapin's suspension in any capacity began July 19, 2004, and will conclude on September 16, 2004. Chapin's suspension from writing research reports began July 19, 2004, and will conclude at the close of business January 18, 2005. (NASD Case #CAF040048)

**Vertical Capital Partners, Inc. (CRD #35909, New York, New York), Ronald Mark Heineman (CRD #241924, Registered Principal, New York, New York) and David Bruce Morris (CRD #340402, Registered Representative, Fairlawn, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$22,500, and suspended from writing or contributing to the preparation of any research report for six months. Following the six-month suspension from writing or contributing to research reports, the firm must submit any research reports prepared by or for the firm to NASD's Advertising Department for approval prior to any report's distribution to the public for two years. Heineman was fined \$22,500, and suspended from association with any NASD member in any capacity for 30 days. Morris was fined \$30,000, suspended from association with any NASD member in any capacity for 30 days, and suspended from writing or contributing to the preparation of any research report for three months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Heineman, failed to adequately supervise the preparation of research reports disclosures regarding the amount of consideration received by the firm, Heineman, and Morris from the issuers. The findings also stated that the firm, acting through Heineman, did not adequately supervise Morris' preparation of a report, in that Heineman knew of the nature of the Securities and Exchange Commission (SEC) action against a company, but failed to ensure that the SEC action and its resolution were adequately described in the text of the report.

The firm's suspension from writing or contributing to the preparation of any research report began August 2, 2004, and will conclude at the close of business February 1, 2005. Heineman's suspension began August 2, 2004, and will conclude at the close of business August 31, 2004. Morris' suspension in any capacity began August 2, 2004, and will conclude at the close of business August 31, 2004. Morris' suspension from writing or contributing to the preparation of any research report began August 2, 2004, and will conclude at the close of business November 1, 2004. (NASD Case #CAF040050)

## Firms Fined, Individuals Sanctioned

**F1 Trading.com, Inc. f/k/a Gold Country Securities (CRD #20375, Mineola, New York) and Charles Vaccarro (CRD #2796589, Registered Principal, Port Washington, New York)** submitted an Offer of Settlement in which the firm was censured and fined \$30,000, jointly and severally, with Vaccarro. Vaccarro was suspended from association with any NASD member in any principal capacity for 30 business days. The fine must be paid before Vaccarro reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or

denying the allegations, the firm and Vaccarro consented to the described sanctions and to the entry of findings that the firm, acting through Vaccarro, failed to supervise adequately the inter-customer lending practices of the firm by permitting non-principal associated persons of the firm to review customer cash journal request forms and sign Vaccarro's initials to those forms to memorialize his purported review when he had not reviewed such forms; and by permitting the use of cash journal forms containing photocopied signatures of the borrowing and/or lending customer and/or photocopied signatures of the notary public to facilitate inter-customer loans to meet day trading margin requirements or calls.

The findings also found that the firm, acting through Vaccarro, failed to establish, maintain, and enforce special procedures for supervising the telemarketing activities of all its registered representatives as required by the Taping Rule, and failed to ensure that all tape recordings made pursuant to the Taping Rule were retained for not less than three years from the date the tape was created, the first two in an easily accessible place. NASD found that the firm, acting through Vaccarro, failed to register an associated person, who was required to be registered as a general securities representative. NASD also found that the firm, acting through Vaccarro, failed to file any reports, including an arbitration settlement that was required to be reported through the NASD Rule 3070 reporting system. In addition, NASD concluded that the firm, acting through Vaccarro, failed to maintain the required minimum net capital while conducting a securities business. The findings also stated that the firm, acting through Vaccarro, failed to prepare and keep current, accurate books and records, including its general ledger, trail balance, balance sheet, and computations of net capital and aggregate indebtedness. Moreover, NASD found that the firm, acting through Vaccarro, failed to prepare and file an accurate Financial and Operation Combined Uniform Single Report (FOCUS) Report Part IIA. NASD found that the firm, acting through Vaccarro, failed to employ an independent auditor to prepare the firm's 2001 Annual Audit as required by SEC Rule 17a-5(f)(3). NASD also found that the firm, acting through Vaccarro, failed to file an Annual Audit in a timely manner.

Vaccarro's suspension began July 19, 2004, and will conclude at the close of business August 27, 2004. (NASD Case #C10030046)

**Network 1 Financial Securities Inc. (CRD #13577, Red Bank New Jersey) and William Richard Hunt, Jr. (CRD #830575, Registered Representative, Robbinsville, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Hunt were censured and fined \$12,500, jointly and severally. Hunt was also ordered to requalify as a financial and operations principal by passing the Series 27 examination within 90 days. If Hunt fails to pass the exam, he may not perform any functions requiring registration in that capacity until he passes

the exam. Without admitting or denying the allegations, the firm and Hunt consented to the described sanctions and to the entry of findings that the firm, acting through Hunt, utilized the instrumentalities of commerce to conduct a securities business while failing to maintain the minimum required net capital. (NASD Case #C9B040053)

## Firm and Individuals Fined

**National Clearing Corp.**, (CRD 14343, Beverly Hills, California), **James Gordon Lewis** (CRD #3093203, Registered Principal, Nashville, Tennessee), and **Michael J. Chiodo** (CRD #2097132, Registered Principal, Thousand Oaks, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Chiodo were censured and fined \$10,000, jointly and severally. The firm was also fined \$25,500, \$10,000, jointly and severally with Lewis. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lewis and Chiodo, failed to accurately compute the amount required to be deposited in the Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to deposit into the Reserve Bank Account the amount required to satisfy the firm's reserve requirement. The findings also stated that the firm reported trades to the Automated Confirmation Transactions Service<sup>SM</sup> (ACT<sup>SM</sup>) without including the seconds information for the time of execution, and failed to report within 90 seconds of execution NASDAQ National Market<sup>®</sup> (NNM<sup>®</sup>) trades and Consolidated Quotation System (CQS) trades. The findings further stated that the firm incorrectly double media reported NNM trades and CQS trades, and failed to reflect the ".w" to report transactions at prices based on average-weighting. (NASD Case #C02040019)

## Firms Fined

**BNY Clearing Services, LLC** (CRD #15879, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report accurately, or facilitated the inaccurate reporting of, transactions in municipal securities. The findings also stated that the firm stamped or accepted inter-dealer trade information to facilitate trade comparisons rather than comparing and identifying information on confirmations to ascertain whether any discrepancies existed, resulting in inaccurate trade information being submitted to the Municipal Securities Rulemaking Board (MSRB). NASD also found that the firm failed to prepare and maintain adequate written supervisory procedures that addressed the firm's reporting of transactions in municipal securities. (NASD Case #C8A040046)

**Burlington Capital Markets Inc.** (CRD #26991, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with transactions, when acting as principal, the firm failed to disclose to its customers that the firm was a market maker in the security and failed to disclose the reported trade price and the commission or commission equivalent. The findings also stated that the firm reported transactions through ACT when it was not the appropriate reporting party, and failed to report timely transactions in debt securities reportable under the Trade Reporting and Compliance Engine (TRACE). (NASD Case #C05040047)

**Investec Ernst & Company** (CRD #266, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to pay \$988.86, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it employed an individual in a principal capacity who did not have the required registration for a principal. The findings also stated that the firm failed to execute orders fully and promptly. NASD also found that the firm, in transactions for or with public customers, failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. In addition, NASD found that the firm, when it acted as principal for its own account, failed to provide written notification disclosing to its customers that it was a market maker in each such security. (NASD Case #CMS040087)

**Ladenburg, Thalmann & Co., Inc.** (CRD #505, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$30,000, and ordered to pay \$483.02, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed in transactions for or with a customer to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #CMS040085)

**Pan-American Financial Advisers** (CRD #15578, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$225,000, and required to retain an outside consultant to prepare a report to the firm and NASD containing recommendations for the adoption of policies and procedures by the firm regarding firm supervision. The firm will provide NASD with a report attesting to the firm's implementation of the consultant's recommendations within 90 days after issuance of the report.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through individuals, failed to establish and maintain an adequate system to supervise the activities of each registered representative and failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding review of exception reports, the sale of variable annuity and variable life contracts, annual compliance conferences with registered representatives, and the prevention of abuse of the firm's proprietary trading account in a branch office. The findings also stated that the firm, acting through an individual, failed to supervise adequately certain principals of the firm and failed to establish and maintain a reasonable system for imposing heightened supervision upon registered representatives with a history of complaints. NASD also found that the firm, acting through an individual, failed to provide an Office of Supervisory Jurisdiction principal with the necessary training or support to properly carry out his supervisory function by failing to provide him with access to the customer account database system and appropriate training concerning the trading activity and systems he was required to supervise. In addition, NASD found that the firm, acting through an individual, failed to maintain an internal record of the names of all persons designated as supervisory personnel and the dates for which such designation was effective. (NASD Case #C05040034)

**Strand, Atkinson, Williams & York, Inc. (CRD #1254, Portland, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to report timely transactions in debt securities reportable under TRACE. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with NASD Marketplace Rules 6210-6260. (NASD Case #C3B040020)

**Tradition Asiel Securities, Inc. (CRD #28269, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$22,500, and required to revise the firm's written supervisory procedures regarding trade reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM securities and failed to designate through ACT such last sale reports as late. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning trade reporting. NASD also found that the firm failed within 90 seconds after execution, to transmit through ACT last

sales reports of transactions in OTC Equity securities and failed to designate through ACT such last sale reports as late. (NASD Case #CMS040088)

## Individuals Barred or Suspended

**Bradley Paul Adams (CRD #867706, Registered Principal, Springhouse, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Adams consented to the described sanction and to the entry of findings that he maintained and controlled a bank account under the name of a financial group and induced public customers to invest in or through the fund. The findings also stated that Adams received checks totaling \$546,000 payable to the fund, deposited the checks into the bank account he controlled, and converted the funds to his own use and benefit. NASD also found that Adams failed to respond to an NASD request to appear and give testimony. (NASD Case #C9A040021)

**Darren Ray Adams (CRD #3180366, Registered Representative, Chicago, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Adams forged a public customer's signature on letters of authorization to effect the wire transfer of \$42,500 to an individual and on withdrawal requests to transfer \$35,000 from the customer's annuity to her brokerage account at Adams' member firm. The findings also stated that Adams forged the customer's signature on a check authorization for \$6,000 payable to the individual and deposited the bank check and wire transfers in the individual's account, thereby converting the customer's funds. The findings also stated that Adams failed to respond to NASD requests for information. (NASD Case #C8A030097)

**Wendi Lynn Adler (CRD #4056768, Associated Person, North Hills, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Adler reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Adler consented to the described sanctions and to the entry of findings that she failed to respond timely to NASD requests for information.

Adler's suspension began July 19, 2004, and will conclude at the close of business August 27, 2004. (NASD Case #CL1040016)

**Justin Edward Apgar (CRD #2770606, Registered Representative, Wall Township, New Jersey)** was fined \$52,000, suspended from association with any NASD member in



any capacity for two months, and required to requalify by exam in any capacity requiring qualification. The National Adjudicatory Council (NAC) imposed the sanctions following the appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Apgar fraudulently misrepresented to a public customer that a mutual fund offered a guaranteed percent rate of return.

Apgar's suspension began June 21, 2004, and will conclude at the close of business August 20, 2004. **(NASD Case #C9B020046)**

**Anthony Harold Barkate (CRD #1255255, Registered Principal, Bakersfield, California)** was barred from association with any NASD member in any capacity. The SEC affirmed the decision following the appeal of a NAC decision. The sanction was based on findings that Barkate participated in private securities transactions without prior written notice to, and approval from, his member firm.

Barkate has petitioned the U.S. Court of Appeals for review and the sanctions, except for the bar, are not in effect pending consideration of the appeal. **(NASD Case #C02010041)**

**James Isaac Barrick, III (CRD #1088520, Registered Representative, Martinsville, Indiana)** was fined \$33,820 and barred from association with any NASD member in any capacity. The fine must be paid if and when Barrick re-enters the securities industry. The sanctions were based on findings that Barrick engaged in an outside business activity without providing his member firm with prompt written notice of his activity. The findings also stated that Barrick failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C8A030034)**

**Danny Robert Baxley (CRD #1417104, Registered Principal, High Point, North Carolina)** submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Baxley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Baxley consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

Baxley's suspension began July 9, 2004, and will conclude at the close of business January 5, 2005. **(NASD Case #C07040031)**

**Brian Joseph Begos (CRD #1876563, Registered Principal, Ridgefield, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Begos consented to the described

sanction and to the entry of findings that he transferred \$240,000 of a public customer's funds into accounts controlled by him for his own use and benefit without customer authorization. The findings also stated that Begos failed to respond to NASD requests for documents and information. **(NASD Case #C11040021)**

**Randy Lee Beltramea (CRD #1759651, Registered Representative, Mount Vernon, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Beltramea consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The findings also stated that Beltramea failed to respond to NASD requests for information. **(NASD Case #C04040032)**

**Paul Joseph Benz (CRD #1548330, Registered Principal, Chester, New Jersey)** was fined \$7,500, required to re-qualify by exam as a general securities principal, and suspended from association with any NASD member in any principal capacity for 30 days. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Benz failed to respond timely to NASD requests for information and allowed his member firm to conduct a securities business when it did not meet its net capital requirement.

Benz has appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C01020014)**

**James Parker Billington (CRD #2428951, Registered Representative, Vancouver, Washington)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Billington reassociates with any NASD member following the suspension or before requesting any statutory disqualification. Without admitting or denying the allegations, Billington consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

Billington's suspension began July 19, 2004, and will conclude at the close of business April 19, 2005. **(NASD Case #C3B040017)**

**James Joseph Boggs, Jr. (CRD #1377904, Registered Representative, Mt. Laurel, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Boggs reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Boggs consented

to the described sanctions and to the entry of findings that he forged the signature of a public customer on a variable annuity application.

Boggs' suspension began July 19, 2004, and will conclude at the close of business October 18, 2004. (NASD Case #C9B040057)

**Donald Joseph Boyles (CRD #3040178, Registered Representative, Austin, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Boyles signed the name of a public customer on a homeowner insurance application and submitted it to his member firm for processing without the knowledge or consent of the customer. The findings also stated that, by submitting the application, Boyles caused funds to be removed from the public customer's escrow account without the customer's knowledge or consent to pay the insurance premium. NASD also found that Boyles failed to respond to NASD requests to appear and give testimony. (NASD Case #C06040001)

**William Scott Bradley (CRD #2133899, Registered Representative, Moore, South Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Bradley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bradley consented to the described sanctions and to the entry of findings that he misrepresented to public customers the maturity dates or information regarding the maturity dates of brokered callable certificates of deposit (CDs) to public customers. The findings also stated that Bradley led the public customers to believe that the long-term callable CDs could be liquidated without penalty after one year.

Bradley's suspension will begin August 16, 2004, and will conclude at the close of business November 15, 2004. (NASD Case #C05040036)

**Marco Anthony Casale (CRD #1663936, Registered Representative, Freehold, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,942.86, including disgorgement of \$18,442.86 in commissions, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Casale consented to the described sanctions and to the entry of findings that he exercised control over the account of a public customer and effected numerous and excessive securities transactions in the account in a manner that was inconsistent with the customer's investment objectives.

Casale's suspension began July 19, 2004, and will conclude at the close of business January 18, 2005. (NASD Case #C9B040054)

**Clyde Allen Christensen (CRD #1505051, Registered Representative, Vancouver, Washington)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Christensen solicited and accepted payments from public customers totaling \$105,000 to be used to purchase securities and, without the customers' knowledge or consent, Christensen deposited the funds into a bank account and a money market account that he controlled. NASD found that Christensen subsequently returned approximately \$20,900 of the funds, but retained the remaining funds and converted them to his own use and benefit. NASD also found that Christensen failed to respond to NASD requests for information. (NASD Case #C3B040006)

**James Joseph Crew (CRD #2102428, Registered Representative, Wantagh, New York)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Crew reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Crew consented to the described sanctions and to the entry of findings that he intentionally or recklessly engaged in manipulative or deceptive conduct in connection with the trading activity in the account of a public customer. The findings stated that Crew settled a customer complaint without the knowledge or consent of his member firm. NASD also found that Crew effected the settlement by misrepresenting the facts and using false pretenses to have his member firm cancel half of a transaction, and by paying the customer checks totaling \$22,000.

Crew's suspension began July 9, 2004, and will conclude at the close of business July 8, 2006. (NASD Case #C10030007)

**Sean Imanol Dalton (CRD #2190439, Registered Representative, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Dalton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dalton consented to the described sanctions and to the entry of findings that he effected unauthorized purchase transactions in the account of a public customer without the customer's knowledge, authorization, or consent. The findings also stated that Dalton failed to respond timely to NASD requests for documentation and information.

Dalton's suspension began July 19, 2004, and will conclude at the close of business January 18, 2006. (NASD Case #C10040067)

**Thomas Robert Diorio (CRD #2305605, Registered Representative, Owego, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Diorio reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Diorio consented to the described sanctions and to the entry of findings that he signed a public customer's name on a life insurance policy amendment, without the permission or knowledge of the customer, for a policy that was about to expire.

Diorio's suspension began July 19, 2004, and will conclude at the close of business August 27, 2004. (NASD Case #C9B040056)

**George Alexander Deussen (CRD #2545262, Registered Principal, Orem, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$60,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Deussen consented to the described sanctions and to the entry of findings that he received \$80,000 from a public customer for investment, took custody of the funds, caused the funds to be deposited into a personal bank account under his control, and used the funds for his personal benefit without the customer's authorization. The findings also stated that Deussen returned \$20,000 to the customer but failed to return the remaining \$60,000. NASD also found that Deussen failed to provide the customer with documentation verifying the investment despite the customer's request. (NASD Case #C3A040033)

**Brian Doyle (CRD #4553410, Associated Person, Indianapolis, Indiana)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Doyle failed to respond to NASD requests for information and willfully failed to disclose material information on his Form U4. (NASD Case #C8A030092)

**Allen Earl Drake (CRD #1145018, Registered Principal, Virginia Beach, Virginia)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Drake, while manager and owner of the general partner of limited partnerships, caused the limited partnerships to make a series of loans totaling \$1,939,675.07 to Drake in his individual capacity; all of these loans were made without the knowledge or consent of the limited partners of the limited partnerships and were expressly prohibited by the terms of the limited partnership agreements. The findings also stated that proceeds of the loans were used to pay Drake's personal and business expenses, as well as expenses of associated entities, unrelated to the limited partnerships and were prohibited by the limited partnership agreements. In addition, NASD determined

that Drake has not repaid any of the loans and has not notified the limited partners of any of the limited partnerships of the loans. (NASD Case #C07040006)

**Jamie Arnold Engelking (CRD #3120784, Registered Representative, Arvada, Colorado)** submitted an Offer of Settlement in which he was fined \$26,280, including \$8,780 in disgorgement of financial benefits received, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Engelking consented to the described sanctions and to the entry of findings that he made an unsuitable recommendation to public customer without having reasonable grounds for believing that the customers had the financial ability to purchase the recommended variable annuity without mortgaging their home to do so. The findings also stated that Engelking had no reasonable grounds for believing that the customers would be able to meet their mortgage commitment should the variable annuity not perform at the very optimistic levels needed to avoid depletion of principal.

Engelking's suspension will begin August 16, 2004, and will conclude at the close of business September 14, 2004. (NASD Case #C3A040006)

**Clayton Dale Farrell (CRD #1872227, Registered Representative, Lakeland, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Farrell consented to the described sanction, and to the entry of findings that he improperly obtained \$9,000 from his member firm and another employer by requesting payment of expenses for which he had already been reimbursed. The findings also stated that Farrell engaged in outside business activities without providing prior written notice to his member firm. (NASD Case #C05040048)

**Rizwan Fazeel (CRD #4476016, Registered Representative, Mineola, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for four months, and ordered to disgorge \$14,175 in commissions in partial restitution to a public customer. Without admitting or denying the allegations, Fazeel consented to the described sanctions and to the entry of findings that he exercised control over a public customer's account and effected numerous and excessive securities transactions in the account using unsuitable levels of margin in a manner inconsistent with the customer's investment objectives.

Fazeel's suspension began July 19, 2004, and will conclude at the close of business November 18, 2004. (NASD Case #C9B040052)

**Rafael Enricque Febus, Sr. (CRD #1256860, Registered Principal, Flushing, New York)** submitted a Letter of

Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Febus consented to the described sanction and to the entry of findings that he engaged in private securities transactions and failed to provide written notification to his member firm prior to effecting these private securities transactions. The findings also stated that Febus intentionally and/or recklessly misrepresented and omitted material facts concerning securities, including guaranteed monthly interest payments and overall value of the securities as a good investment when soliciting sales of securities to public customers. The findings further stated that Febus failed to respond to NASD requests for information. (NASD Case #C10040069)

**Richard Allan Finger (CRD #4432634, Registered Representative, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Finger consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to his member firm.

Finger's suspension began June 25, 2004, and concluded at the close of business July 23, 2004. (NASD Case #C3A040032)

**Eloy Gomez (CRD #4393584, Associated Person, Mission, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Gomez received \$1,572 from public customers as insurance premium payments and mishandled the funds by using \$972 for his own use and benefit. The findings also stated that Gomez failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C06030028)

**Adam Douglas Grodin (CRD #1818807, Registered Principal, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$51,744, including \$46,744 in disgorgement of commissions received, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Grodin consented to the described sanctions and to the entry of findings that he recommended that a public customer purchase Class B mutual fund shares that were unsuitable for the customer because the customer could have purchased Class A shares that would have paid lower 12b-1 fees and would have avoided being subject to contingent deferred sales charges.

Grodin's suspension began July 19, 2004, and concluded at the close of business August 13, 2004. (NASD Case #C9A040018)

**Yosif ("Joseph") Hananiya (CRD #2423855, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hananiya consented to the described sanction and to the entry of findings that he failed to comply with an NASD request to provide testimony. (NASD Case #CLI040017)

**Andrew C. Hanes, Jr. (CRD #4713043, Associated Person, Harrisburg, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hanes consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. The findings also stated that Hanes failed to respond to NASD requests for information. (NASD Case #C07040056)

**Neill N. Henain (CRD #4147298, Registered Representative, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Henain consented to the described sanction and to the entry of findings that he executed a \$400,685.67 promissory note on behalf of himself and a public customer without his member firm's authority in order to settle a customer complaint without the firm's knowledge or approval. (NASD Case #C11040026)

**Jeffrey Mark Herber (CRD #1091122, Registered Principal, Rome, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Herber consented to the described sanction and to the entry of findings that he received a check from a public customer payable to a fictitious company for investment in a fixed annuity, failed to invest the money, and misappropriated the customer's funds without the customer's permission or authority. The findings also stated that Herber created and gave the customer a false account statement reflecting the purported value of the fixed annuity. NASD also found that Herber received \$25,000 from public customers for investment in securities and, instead of investing the funds, misused the customers' money for other purposes without the customers' permission or authority. In addition, NASD found that Herber created and gave the customers false transaction confirmations and account summary statements reflecting their purported securities holdings. (NASD Case #C11040024)

**Sander Icelso Hernandez (CRD #4712021, Associated Person, Hillside, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before



Hernandez reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hernandez consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Hernandez' suspension began July 19, 2004, and will conclude at the close of business August 27, 2004. (NASD Case #C9B040055)

**Delicia Josette Hurdel-Boakye (CRD# 4175385, Registered Representative, Herndon, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hurdel-Boakye consented to the described sanction and to the entry of findings that she converted approximately \$12,000 from a bank by making debits to the bank's ledger accounts, and then used the funds to make payments to certain bank customers who had complained to her about issues relating to home loans the customers held with the bank. (NASD Case #C9A040019)

**Amani Hussein (CRD #4486111, Registered Representative, Fairfax, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hussein consented to the described sanction and to the entry of findings that he made unauthorized debit entries totaling \$88,000 in a bank's general ledger account and caused the funds to be transmitted to unauthorized third parties. (NASD Case #C07040057)

**Cynthia Marie Jenchowski (CRD #1620609, Registered Principal, Nutley, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Jenchowski consented to the described sanctions and to the entry of findings that a member firm, acting through Jenchowski, purchased 1.2 million warrants from the lead underwriter of an initial public offering (IPO) on the first day of trading and sold in the immediate aftermarket nearly all of the warrants to retail customers within approximately 45 minutes. The findings included that the reselling of these warrants was of a substantial magnitude and was accompanied by special selling efforts and methods so as to constitute a distribution for purposes of SEC Rule 10b-6. The findings further stated that during the distribution, Jenchowski, at the direction of her firm, made a market in the warrants and bid for, purchased, or induced others to purchase the security.

Jenchowski's suspension began July 6, 2004, and concluded at the close of business July 12, 2004. (NASD Case #CAF000010)

**Denise Lee Johnson (CRD #4607716, Registered Representative, Des Moines, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity and ordered to pay \$2,508.15, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that she made unauthorized transactions in a bank account of an employee-run committee, including withdrawing cash from the account and using the account's debit card, thereby converting \$2,508.15 to her personal use. (NASD Case #C04040031)

**Samuel Kluff Koltun (CRD #1739664, Registered Representative, Jupiter, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500, including disgorgement of \$7,864.14 in commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Koltun consented to the described sanctions and to the entry of findings that he recommended numerous Class B mutual fund transactions to public customers that were unsuitable for the customers. The findings also stated that the recommendations were unsuitable since Class A shares should have been recommended instead of Class B shares. The findings also stated that, had Class A shares been recommended, the customers would have been eligible to receive breakpoints on Class A share purchases, paid lower 12b-1 fees, and avoided being subject to contingent deferred sales charges.

Koltun's suspension began August 2, 2004, and concluded at the close of business August 13, 2004. (NASD Case #C9B040060)

**Tonino Gaetano Labella (CRD #1066893, Registered Principal, Drexel Hill, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Labella failed to respond to NASD requests to appear and provide testimony. (NASD Case #C9A040001)

**William Matthew Lawlor (CRD #2537909, Registered Representative, Branford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$11,250, including disgorgement of \$1,250 in commissions, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Lawlor consented to the described sanctions and to the entry of findings that he recommended and initiated numerous transactions in the securities account of a public customer without having reasonable grounds for believing that his recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objective, and needs.

Lawlor's suspension began July 19, 2004, and will conclude at the close of business August 17, 2004. (NASD Case #C11040022)

**Robert Waldo Leavenworth (CRD #2766524, Registered Representative, Atlanta, Georgia)** submitted an Offer of Settlement in which he was fined \$7,318.85, including disgorgement of \$2,318.85 in commissions received, and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Leavenworth reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Leavenworth consented to the described sanctions and to the entry of findings that he recommended and purchased unsuitable speculative securities for public customers without considering the customers' age, employment status, income needs, net worth, and investment experience.

Leavenworth's suspension began July 19, 2004, and will conclude at the close of business September 1, 2004. (NASD Case #C07040012)

**Guang Lu (CRD #2691821, Registered Representative, Gaithersburg, Maryland)** was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Lu failed to notify his member firm in writing that he was exercising discretion in an account maintained by another firm and also failed to notify the firm at which he was trading of his association with a member firm. The findings also stated that Lu exercised discretion in the account of a public customer without prior written authorization from the customer and his member firm. NASD also found that Lu effected unsuitable options trades in the account of a public customer. In addition, NASD found that Lu failed to provide accurate information on his Form U4.

Lu has appealed the decision to the SEC, and the sanctions, except for the bar, are not in effect pending consideration of the appeal. (NASD Case #C9A020052)

**Gary Mackie (CRD #2641092, Registered Representative, Crawley, Great Britain)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mackie consented to the described sanction and to the entry of findings that he caused the wire transfer of funds from a client's securities account to his personal bank account in the amount of GBP 4,581.62, without the knowledge or consent of the client, thereby converting the funds. (NASD Case #C10040063)

**Glenn Geoffrey Malloff (CRD #730369, Registered Representative, Melville, New York)** submitted a Letter of

Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Malloff consented to the described sanction and to the entry of findings that he churned the account of a public customer by effecting, or causing to be effected, over 700 securities transactions in the account by exercising discretion over the account. The findings also stated that Malloff's trading was excessive in view of the customer's objectives, financial situation, and the nature of the account. NASD also found that the cost/equity ratio for the account was approximately 65 percent (56 percent on an annualized basis) during a specific time period. In addition, NASD found that Malloff, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. Furthermore, NASD found that Malloff failed to respond to NASD requests for information and documents. (NASD Case #C10040070)

**Christopher Scott Maury (CRD #2778197, Registered Representative, Manalapan, Florida)** was barred from association with any NASD member in any capacity and ordered to pay \$13,500, plus interest, in restitution. The sanctions were based on findings that Maury received \$13,500 from a public customer for investment purposes and converted the funds for his own use and purpose by depositing the funds into his personal bank account. The findings also stated that Maury failed to respond to NASD requests for information. (NASD Case #C07040011)

**Robert Steven Meyer (CRD #3074785, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry of findings that he purchased stocks for public customer accounts without the consent or authority of the customers.

Meyer's suspension began July 19, 2004, and will conclude at the close of business August 18, 2004. (NASD Case #C9B040045)

**Tad Enrique Mihalopoulos, Sr. (CRD #2035916, Registered Representative, Tracy, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Mihalopoulos provided public customers with investment order authorization (IOA) forms that contained misleading contingent surrender deferred sales charges (CDSC) schedules for their particular security purchases. The findings also stated that Mihalopoulos provided customer-signed IOA forms to his member firm that falsely represented that he had

accurately completed the CDSC schedules on the IOA forms provided to the customers. (NASD Case #C01030004)

**Glenn Clark Moore (CRD #1877447, Registered Representative, Manassas, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$8,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he signed the names of a public customer and his wife and completed certain information on an account agreement without the customers' knowledge or consent.

Moore's suspension began August 2, 2004, and concluded at the close of business August 13, 2004. (NASD Case #C07040061)

**Suzanne J. Morris (CRD #3226656, Associated Person, Columbus, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Morris reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that she scanned a Client General Account Agreement Signature Page into a computer and then cut and pasted signatures of clients from applications previously signed by the clients onto forms without the customers' knowledge or consent.

Morris' suspension began July 19, 2004, and will conclude at the close of business January 18, 2005. (Case #C8A030107)

**Jaime Alyson Nortman (CRD #4353970, Associated Person, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Nortman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Nortman consented to the described sanctions and to the entry of findings that she failed to respond timely to NASD requests for information.

Nortman's suspension began July 19, 2004, and will conclude at the close of business August 17, 2004. (NASD Case #CLI040015)

**Theresa Bentura Oldham (CRD #1932328, Registered Representative, Middleton, Idaho)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without

admitting or denying the allegations, Oldham consented to the described sanction and to the entry of findings that she solicited and accepted funds totaling \$38,325 from public customers to purchase securities and converted the funds for her own use and benefit without the knowledge or consent of the customers. (NASD Case #C3B040019)

**Susan Margaret Palmatier (CRD #1788644, Registered Principal, St. Louis Park, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which she was suspended from association with any NASD member in any capacity for 10 days. In light of the financial status of Palmatier, no monetary sanctions were imposed. Without admitting or denying the allegations, Palmatier consented to the described sanction and to the entry of findings that while she was an investor services representative at a member firm, she approved numerous investments in securities offered to the public that were unsuitable based on the customers' investment objectives and financial conditions, and resulted in customers being over-concentrated in high-risk securities.

Palmatier's suspension began July 6, 2004, and concluded at the close of business July 15, 2004. (NASD Case #CAF040045)

**David Richmond Palmer (CRD #3057939, Registered Representative, Elkton, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palmer consented to the described sanction and to the entry of findings that he effected withdrawals totaling \$8,900 from his insurance company's Premium Fund Account (PFA), and converted the funds to his own benefit. The findings also stated that, after the insurance company requested a copy of the PFA statement in connection with an audit of the account, Palmer altered the account statement or a copy thereof and provided the insurance company the altered statement, representing it to be genuine. (NASD Case #C9A040022)

**Ben John U. Pangilinan, Jr. (CRD #4306880, Registered Principal, Lincroft, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and barred from association with any NASD member in any principal or supervisory capacity. The fine must be paid before Pangilinan reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pangilinan consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise an individual that was reasonably designed to detect and prevent the creation of false documents in connection with variable annuity transactions for public customers in violation of firm policy and to achieve compliance with applicable securities laws and regulations. (NASD Case #C9B040058)

**Benjamin Agleham Pangilinan (CRD #1123349, Registered Representative, Lincroft, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pangilinan consented to the described sanction and to the entry of findings that he created false documents in connection with the purchase and sale of variable annuity transactions for public customers that were made in violation of his member firm's policy. The findings also stated that Pangilinan made false statements to firm management when questioned about such transactions to avoid detection of his violation of firm policy. (NASD Case #C9B040062)

**Jhoanny E. Pena (CRD #4401861, Associated Person, Bronx, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Pena had access to confidential public customer information, including customer account numbers and improperly divulged customer account numbers to a third party not associated with her member firm. The findings also stated that Pena failed to respond to NASD requests to provide testimony. (NASD Case #C10030135)

**Walter Eugene Phillips, Jr. (CRD #4503098, Registered Representative, Murfreesboro, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Phillips consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4. (NASD Case #C05040049)

**Walter Edward Powers, IV (CRD #3145275, Registered Representative, Windsor, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Powers consented to the described sanction and to the entry of findings that he caused the transfer of at least \$33,774 from the retirement accounts of public customers to a separate bank account over which he exerted control, without the authorization or consent of the customers, and converted the funds for his own personal use. The findings also stated that Powers failed to respond to NASD requests for documents and information. (NASD Case #C11040025)

**Jay Lee Quinton (CRD #2829452, Registered Representative, Ada, Oklahoma)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quinton consented to the described sanction and to the entry of findings that he induced the purchase of securities by making misrepresentations to the purchasers and omitting material facts regarding the risks and features of the

securities. The findings also stated that Quinton failed to respond to NASD requests for information. (NASD Case #C05040033)

**Edwin Everett Reardon, Jr. (CRD #859951, Registered Supervisor, Mandeville, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Reardon consented to the described sanction and to the entry of findings that he failed to respond completely to NASD requests for information. (NASD Case #C05040035)

**Michael James Rogers (CRD #708558, Registered Representative, Danville, California)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rogers consented to the described sanction and to the entry of findings that he participated in securities transactions outside the normal scope of his employment with his member firm and failed to give prior written notice to, and receive approval from, his member firm for his participation in the transactions. The findings also stated that Rogers failed to respond to NASD requests for information and documentation. (NASD Case #C01040014)

**Steven Walter Schaefer (CRD #1894353, Registered Principal, Kings Park, New York)** was barred from association with any NASD member in any capacity and ordered to pay \$64,396, plus interest, in restitution to public customers. The sanctions were based on findings that Schaefer recommended and sold shares of a security to public customers and made fraudulent omissions of material fact and baseless price predictions. The findings also stated that Schaefer failed to tell the customers that he could or would receive compensation that exceeded the markup disclosed on the trade confirmations. (NASD Case #C3A030053)

**Terrence Richard Sprague (CRD #1612506, Registered Representative, Seattle, Washington)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sprague consented to the described sanction and to the entry of findings that he made oral and written misrepresentations to public customers in selling long-term CDs to public customers. The findings also stated that Sprague misrepresented that the CDs had short-term maturities, that the customers could call the CDs whenever needed, and that the CDs could be redeemed without penalty and without risk to the principal. NASD also found that Sprague failed to respond to NASD requests for information. (NASD Case #C05030045)

**Roger Paul Stewart (CRD #1190849, Registered Representative, Morgantown, West Virginia)** was barred from association with any NASD member in any capacity. The



sanction was based on findings that Stewart consented to the described sanction and to the entry of findings that he received \$400 from a public customer to pay the premiums on the customer's automobile insurance policy, failed to apply the funds as directed, and instead converted the funds for his own use and benefit. The findings also stated that Stewart failed to respond to NASD requests for information. (NASD Case #C9A040002)

**William Michael Stickney (CRD #2094062, Registered Principal, Hopkinton, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stickney consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #C11040023)

**Samson Su (CRD #4034920, Registered Representative, Rancho Palos Verdes, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 225 days. The fine must be paid before Su reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Su consented to the described sanctions and to the entry of findings that he provided a public customer a business card that reflected false and misleading information that he was a vice president of a member firm. NASD also found that, without the knowledge or consent of his member firm, Su entered into a written agreement to pay \$75,000 to a public customer whose investment portfolio had sustained losses and to secure payment of the settlement agreement, Su provided the customer with an assignment of a deed of trust on Su's residence.

Su's suspension began July 19, 2004, and will conclude with the close of business February 28, 2005. (NASD Case #C02040020)

**Brooke Sasha Toribio (CRD #4700604, Registered Representative, Tampa Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Toribio consented to the described sanctions and to the entry of findings that during the course of a Series 7 examination, Toribio was in possession of a small sheet of paper containing notes relevant to the Series 7 examination which is prohibited.

Toribio's suspension began August 2, 2004, and will conclude at the close of business August 1, 2005. (NASD Case #C07040060)

**Anthony Rahama Whitter (CRD #2733252, Registered Representative, Mt. Vernon, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Whitter consented to the described sanctions and to the entry of findings that he failed to respond fully and completely during an NASD on-the-record interview.

Whitter's suspension began July 19, 2004, and will conclude at the close of business September 16, 2004. (NASD Case #C10040065)

**Joseph Michael Williams, Sr. (CRD #467974, Registered Representative, West Deal, New Jersey)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 30 days and ordered to pay \$10,000 in partial restitution to a public customer. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he made recommendations to a public customer to purchase securities without having reasonable grounds for believing that the recommendations were suitable for the customer based on the customer's financial needs and investment objectives.

Williams' suspension began August 2, 2004, and will conclude at the close of business August 31, 2004. (NASD Case #C9B040027)

## Decisions Issued

The following decisions have been issued by the District Business Conduct Committee (DBCC) or the OHO and have been appealed to or called for review by the NAC as of July 2, 2004. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

**Todd Grafenauer (CRD #4408817, Registered Representative, Mukwonago, Wisconsin)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Grafenauer forged the signatures of college officials on hold harmless agreements and letters on the college's letterhead and provided the documents to his member firm that purportedly confirmed that student interns would receive college credit for working at the firm.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C8A030068)

**Michael Bernard O'Hare (CRD #2522972, Registered Representative, Bridgewater, New Jersey)** was fined \$7,848.55 and suspended from association with any NASD

member in any capacity for 10 business days. The sanctions were based on findings that O'Hare engaged in unsuitable transactions in the account of a public customer.

This decision has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #C9B030045)

**Scott Emil Wiard (CRD #1509365, Registered Principal, Ypsilanti, Michigan) and James Davis Reisinger (CRD #1275258, Registered Principal, Dexter, Michigan)** were barred from association with any NASD member in any capacity. The sanctions were based on findings that Wiard and Reisinger made a material change in the investment strategy they were employing for clients without the authorization of the clients. The findings also stated that Wiard and Reisinger failed to determine the suitability of leaving their clients fully invested in volatile equities sub-accounts or mutual funds. NASD also found that Wiard exercised discretion over the investment decisions of public customers even though his continued association with his member firm required that he not maintain discretionary accounts. In addition, NASD found that Wiard failed to update his Form U4 in a timely manner.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C8A030078)

**Terrance Yutaka Yoshikawa (CRD #474700, Registered Principal, Seattle, Washington)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Yoshikawa, on behalf of securities accounts he owned or controlled at his member firm, engaged in a series of transactions designed to increase or decrease the national best bid or offer (NBBO) quote for NASDAQ securities to enable him to trade in those securities at more favorable prices. The findings also stated that Yoshikawa's repeated placing of a small limit order priced away from the market through Instinet had the effect of changing the NBBO, followed immediately by the execution of a larger order at the new NBBO; the cancellation of the small order constituted market manipulation.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #CMS020247)

## Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are adjudicated, you may wish to

contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**John Joseph Donadio (CRD #2924386, Registered Representative, Staten Island, New York)** was named as a respondent in an NASD complaint alleging that, in connection with the purchase or sale of securities, he directly or indirectly, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility or any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit.

The complaint also alleges that Donadio effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent device or contrivance by inducing public customers to purchase shares of stock by falsely representing that the issuer had entered into an agreement with another company to be acquired and that the projected stock would double in price within three to six weeks. The complaint further alleges that Donadio failed to disclose that the stock issuer had virtually no assets or earning and that its auditors had issued a "going concern" warning in connection with the company's audit. In addition, the complaint alleges that Donadio's predictions, representations, and omissions were material, false, misleading, and/or without a reasonable basis, and in making the predictions, representations, and omissions, Donadio acted intentionally and/or recklessly. (NASD Case #C10040064)

**Francisco Galvan (CRD #1164780, Registered Principal, Stockton, California)** was named as a respondent in an NASD complaint alleging that he engaged in private securities transactions without providing prior written notice to his member firm. The complaint also alleges that Galvan made unsuitable recommendations to a public customer based upon the facts disclosed by her regarding her other securities holdings, her financial situation and needs, and the fact that the purchases required the investments of the customer's entire liquid net worth and required her to borrow funds against her credit cards. The complaint further alleges that Galvan failed to respond to NASD requests for information and documentation concerning customer complaints. (NASD Case #C01040017)

**Patrick Jesse Garcia (CRD #3211453, Registered Representative, Yukon, Oklahoma)** was named as a respondent in an NASD complaint alleging that he received \$8,179.18 in cashier's checks from a public customer for the purchase of securities, endorsed the cashier's checks, neglected to purchase the securities, and held the funds until a later date when he provided the funds to his former member firm. The

complaint also alleges that Garcia failed to respond to NASD requests for information. (NASD Case #C05040038)

**William Robert Goodhue (CRD #225161, Registered Representative, Wellington, Florida)** was named as a respondent in an NASD complaint alleging that he recommended to, and purchased for, a public customer Class B shares of his member firm's proprietary mutual funds even though Class D shares had lower annual costs, carried a front-end sales charge that was eliminated for purchases over \$1 million, and rights of accumulation and letters of intent were available for the Class D shares. The complaint also alleges that Goodhue earned \$8,844.82 more in commissions by selling Class B shares rather than Class D shares. The complaint further alleges that Goodhue did not have reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. (NASD Case #C07040054)

**Todd William Kmiec (CRD #1726325, Registered Supervisor, Chicago, Illinois)** was named as a respondent in an NASD complaint alleging that he recommended and effected transactions in the accounts of public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers based on the customers' financial situations, investment objectives, and needs. The complaint also alleges that Kmiec failed to respond to NASD requests for information and documents. (NASD Case #C8A040056)

**Charles Vito Koubek, Jr. (CRD #2068434, Registered Representative, Forest Hills, New York)** was named as a respondent in an NASD complaint alleging that Koubek engaged in private securities transactions and failed to provide prior written notice to his member firm. The complaint also alleges that Koubek, while using the means and instrumentalities of interstate commerce to offer securities for sale, omitted to state material facts necessary in order to make the statements made in connection with such offers, in light of the circumstances in which they were made, not misleading; engaged in acts, practices, or courses of business that operated or would operate as fraud or deceit; effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent device or contrivance; and failed to observe high standards of commercial honor and just and equitable principals of trade. The complaint further alleges that Koubek induced a public customer to purchase \$30,000 worth of securities by representing to the customer that he would triple his investment within six months. In addition, the complaint alleges that Koubek's price predictions were materially false and/or made without a reasonable basis. Moreover, the complaint alleges that Koubek failed to respond to NASD requests for information. (NASD Case #C10040072)

**Wayne Davis Shook (CRD #2837213, Registered Representative, Old Orchard Beach, Maine)** was named as a respondent in an NASD complaint alleging that Shook engaged in trading that was excessive in size and frequency in a public customer's account in view of the customer's financial circumstances and investment objectives. The complaint also alleges that Shook executed the transactions in the customer's account without reasonable grounds for believing that the level of activity represented by such transactions was suitable for the customer on the basis of her financial condition, investment objectives, and needs. (NASD Case #C8A040047)

**Marty Derwin Simpson (CRD #2631722, Registered Representative, Stuttgart, Arizona)** was named as a respondent in an NASD complaint alleging that he received \$15,272.64 from a public customer for the purchase of a deferred variable annuity, deposited the check into his own personal checking account, and neglected to purchase a deferred variable annuity for the account of the customer, thereby converting the funds to his own use and benefit. The complaint further alleges that Simpson failed to respond to NASD requests for information. (NASD Case #C05040037)

### **Firms Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

**A. B. Watley, Inc.**  
New York, New York  
(July 2, 2004)

**Day International Securities (DIS)**  
San Jose, California  
(July 2, 2004)

**DuPont Securities Group, Inc.**  
New York, New York  
(July 2, 2004)

### **Firm Suspended for Failure to Supply Financial Information**

The following firm was suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 8221. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Geek Securities, Inc.**  
Boca Raton, Florida  
(July 2, 2004)

**Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210.**

(The date the bar became effective is listed after the entry.)

**Foreman, James A.**  
Lafayette, Louisiana  
(June 17, 2004)

**Gilbert, Martin**  
Jersey City, New Jersey  
(June 28, 2004)

**Zander, Melinda J.**  
Sterling Heights, Michigan  
(June 23, 2004)

**Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210.**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Fernandez, George I.**  
Miami, Florida  
(June 25, 2004)

**Goldstein, Jeffrey W.**  
New York, New York  
(June 7, 2004)

**Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Appleyard, David J.**  
Linwood, New Jersey  
(June 22, 2004)

**Ramos, Jr., Moises**  
Miami, Florida  
(July 7, 2004)

**Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

**Day, Douglas Conant**  
San Jose, California  
(July 2, 2004)

**Dooley, Robert M.**  
Highlands Ranch, Colorado  
(July 2, 2004)

**Helfer, Louis A.**  
Summit, New Jersey  
(July 2, 2004)

**Levine, George**  
Boca Raton, Florida  
(July 2, 2004)

**Rabinovich, Alex**  
Brooklyn, New York  
(July 2, 2004)

**Wood, Ronald W.**  
Lincoln, California  
(July 2, 2004)

**NASD Hearing Panel Dismisses Complaint against Peter R. Kellogg**

An NASD Hearing Panel dismissed a complaint against Peter R. Kellogg alleging that he engaged in fraudulent wash and matched trades during August 2001. The Hearing Panel found that there was no evidence that Kellogg carried out the four transactions at issue with the intention to defraud, manipulate, or deceive. Rather, the panel found that Kellogg conducted the transactions for legitimate business and tax purposes.

**NASD Fines Morgan Stanley \$2.2 Million for Late Reporting, Firm Temporarily Suspended from Registering New Brokers**

NASD ensured and fined Morgan Stanley DW Inc. \$2.2 million for more than 1,800 late disclosures of reportable information about its brokers. The late reports concerned, among other things, customer complaints and disciplinary actions by regulators. NASD also charged Morgan Stanley for supervisory failures relating to the late filings.

In addition to ordering the fine, NASD prohibited Morgan Stanley from registering any new brokers for one week, required it to hire an independent consultant to assess the firm's supervisory systems and procedures in the reporting area, and imposed specific ongoing reporting obligations.



NASD concluded that the late filings by Morgan Stanley had delayed several NASD investigations. The late filings also may have hampered the investing public's ability to accurately assess the background of certain brokers through NASD's public disclosure program, BrokerCheck, and compromised the ability of state securities regulators to review applications from brokers changing firms.

"Every firm has a fundamental obligation to accurately and promptly file information about its brokers that NASD, other regulators and—most importantly—the investing public rely on to learn of potential misconduct," said NASD Vice Chairman Mary L. Schapiro. "Those obligations cannot be ignored, and negligence on the scale demonstrated in this case merits particularly strong sanctions."

Under NASD rules, after a securities firm hires a broker, it must ensure that information disclosed on the broker's application for registration (Form U4) is kept current in the Central Registration Depository (CRD). The firm must file amendments with NASD promptly to update the information on the form when significant events occur—including regulatory actions against the broker, customer complaints and settlements involving the broker, and criminal charges and convictions. Normally, the amendments must be filed within 30 days. If the reportable event involves a statutory disqualification, the event must be disclosed within 10 days. In addition, firms must notify NASD within 30 days of learning that information disclosed on a termination notice (Form U5) filed for a broker has become inaccurate or is incomplete.

NASD found that, from January 2002 to March 2004, Morgan Stanley failed to file in a timely manner approximately 67 percent of the required Form U4 and Form U5 updates that were the subject of NASD's review. Those updates were filed from one to several hundred days late, and approximately 52 percent of all late filings were more than 90 days late. NASD also found that Morgan Stanley failed to maintain and enforce effective supervisory systems and procedures to achieve compliance with its reporting obligations. The firm, among other things, failed to assign clear responsibilities and tasks to its management and employees; to ensure that employees were accountable for the performance of their assigned tasks within clearly defined time periods, and to allocate sufficient resources, including personnel and other resources, to ensure timely filings.

Morgan Stanley previously has been the subject of four New York Stock Exchange disciplinary actions for similar reporting violations. State securities regulators in Maryland, Florida, and Vermont also have previously filed charges against the firm for failing to update reportable information pertaining to its representatives.

Morgan Stanley agreed to the sanctions while neither admitting nor denying the allegations.

NASD currently is engaged in a number of ongoing investigations involving similar types of reporting violations at other firms, including both late filings and failures to report information about brokers.

### **Goldman Sachs, Deutsche Bank, Miller Tabak Roberts, Citigroup Global Markets to Pay Total \$20 Million for Corporate High-Yield Bond Trade Violations**

NASD ordered Goldman, Sachs & Co.; Deutsche Bank Securities, Inc.; Miller Tabak Roberts Securities, LLC; and Citigroup Global Markets Inc. to pay \$5 million each for rule violations relating to trading in corporate high-yield bonds. All four firms were cited for charging excessive markups or markdowns, inadequate record keeping, and supervision violations. The firms were also ordered to revise their written supervisory procedures for high-yield bond sales and purchases within 60 days.

All four firms were ordered to make restitution payments for the markup/markdown violations: nearly \$344,000 for Goldman Sachs, \$422,000 for Deutsche Bank, \$182,000 for Miller Tabak Roberts, and \$486,000 for Citigroup Global Markets.

NASD also charged three of the firms—Goldman Sachs, Deutsche Bank, and Citigroup Global Markets—with trade-reporting violations. Two of the firms—Deutsche Bank and Miller Tabak Roberts—were charged with failure to register one or more supervisors on the firms' high-yield desks.

"NASD rules require that firms sell all securities, including corporate high-yield debt, at fair prices," said NASD Vice Chairman Mary L. Schapiro. "NASD markup policy has been clear that markups and markdowns generally should not exceed 5 percent and, for most debt transactions, that figure should be lower. Numerous SEC and court rulings have reiterated these principles throughout the years. In the cases we announce today, markups and markdowns were clearly outside these well-established guidelines."

NASD found that in 2000 and 2001, Goldman Sachs charged markdowns ranging from 9.4 percent to 30.4 percent on five pairs of trades. From mid-2000 through early 2002, Deutsche Bank charged markdowns ranging from 9.6 percent to 16.6 percent on seven pairs of trades. In 2001 and early 2002, Miller Tabak Roberts charged markdowns ranging from 9.4 percent to 18 percent on three pairs of trades. Finally, from 2000 to early 2002, Citigroup charged markups and markdowns ranging from 13.1 percent to 32.2 percent on three pairs of trades. The firms bore little or no risk in these transactions.

In addition, all four firms failed to create or maintain records that clearly and accurately reflected the time customer orders were entered or the time those orders were executed. Such basic recordkeeping is required by SEC and NASD rules. Furthermore,

the systems used by Goldman Sachs and Deutsche Bank to report the high-yield bond transactions did not allow the firms to report accurate execution times when the trades were input late. Reliance on systems that prevent compliance with applicable rules is an unacceptable practice.

NASD also found that supervision at all four firms was deficient. For nearly two years at Goldman Sachs and for at least six months at Deutsche Bank, there was confusion as to who was responsible for reviewing certain high-yield bond trades. As a result, it was not clear that any supervisory review of those trades occurred. Even when high-yield bond trades were reviewed, the supervisory reviews at Goldman Sachs and Deutsche Bank failed to conform to the policies or standards set forth in the firms' own written supervisory procedures. At Miller Tabak Roberts, the review of these trades was based on an unwritten internal guideline that was inconsistent with the NASD Markup Policy. At Citigroup, the supervisory procedures did not provide for a review to determine compliance with NASD's markup policy. The firms did not identify these fundamental supervisory failures until NASD initiated its investigations.

In concluding these settlements, the firms neither admitted nor denied the charges.

### **NASD Uses Cease-and-Desist Authority for First Time, Seeks Halt to Ongoing Fraud by Brokerage LH Ross**

#### ***NASD Charges Brokerage with Illegally Raising over \$7 Million through Self-Offering***

NASD has filed for a Temporary Cease-and-Desist Order against Boca Raton, FL-based brokerage LH Ross, seeking an immediate halt to ongoing fraudulent and illegal sales activities relating to unregistered private placement self-offerings that have raised more than \$7 million for the firm.

This is the first time NASD has used its temporary cease-and-desist authority, which was approved by the SEC in June 2003.

In its complaint, NASD charged that at least 15 brokers in at least eight LH Ross branch offices in Florida and New York have made material misrepresentations and failed to provide important information to investors in connection with private sales of LH Ross stock in 2003 and 2004. Since January 2003, LH Ross has raised more than \$7 million by selling its own securities to more than 140 customers throughout the country. More recently, the firm has also solicited customers to lend the firm money on a short-term, unsecured basis using false and misleading statements.

"LH Ross is engaging in an ongoing campaign of deceit designed to lure unsuspecting and unqualified customers into

making highly risky private investments based on misleading and incomplete information," said NASD Vice Chairman Mary L. Schapiro. "NASD must act now to protect investors and must use every tool at its disposal and therefore is seeking a temporary cease and desist order against LH Ross to immediately stop its improper activities."

NASD charged that among the misrepresentations that LH Ross brokers made to customers were: that the firm would pay a dividend ranging from 5 percent to 9 percent on the stock; that LH Ross was going to engage in an initial public offering (IPO) of the stock in the near future, and that self-offering shares that customers bought were a short-term investment that could be sold for a quick windfall after the firm's IPO. Many customers were given a specific price prediction for the stock ranging from \$17 to \$60 per share. Most were also told that their investments in the firm had already appreciated. All of the representations were untrue.

NASD charged that LH Ross also failed to disclose important information to prospective investors in the firm's stock. For example, investors were not told that the firm had lost more than \$6 million since 2001. They were not told about the firm's extensive and serious disciplinary history, including disciplinary actions filed by NASD and several state regulators. The firm rarely provided investors with the offering documents it was required to give customers before selling them stock in the firm. Most of the investors who did receive the documents received them weeks or months after the date of purchase and sometimes in incomplete form.

NASD also charged that several LH Ross brokers invested customer funds in the firm's stock without the customers' knowledge or consent, and in some instances refused to cancel or reverse the purchases even when the customers complained.

If the Temporary Cease-and-Desist Order is granted, it will generally remain in effect until the underlying disciplinary action against the firm for this misconduct has been resolved. NASD may seek to suspend or expel a firm for violating a TCDO.

LH Ross is currently the subject of three other actions pending before NASD disciplinary panels: CAF030055, filed October 10, 2003, alleging a scheme to illegally manipulate the market in Trident Systems International stock; CAF040042, filed May 26, 2004, alleging that LH Ross and its president, Franklyn Michelin, failed to timely pay an arbitration award; and C07040054, filed July 7, 2004, alleging that LH Ross and Michelin participated in a fraudulent scheme to profit at the expense of its customers through unauthorized trades.

Last month, NASD filed a fraud action against another brokerage firm—Investprivate of New York, NY—in connection with self-offerings (see [www.nasdr.com/news/pr2004/release\\_04\\_041.html](http://www.nasdr.com/news/pr2004/release_04_041.html)). At the same time, NASD issued an Investor Alert on the issue

(see NASD Investor Alert—Brokerage Firm Private Securities Offerings: Buying Your Brokerage at [www.nasd.com/Investor/Alerts/bdos.htm](http://www.nasd.com/Investor/Alerts/bdos.htm)).

Under NASD rules, the individuals and firms named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, an order to pay restitution, censure, suspension, or bar from the securities industry.

### **NASD Fines Citigroup, Merrill Lynch, and Morgan Stanley a Total of \$750,000 for Failing to Comply with Discovery Obligations in Arbitrations**

NASD censured and fined Citigroup Global Markets, Inc., formerly Salomon Smith Barney; Merrill Lynch, Pierce, Fenner & Smith Incorporated; and Morgan Stanley DW Inc. \$250,000 each for failing to comply with their discovery obligations in 20 arbitration cases during the period 2002 through 2004.

All three firms must also implement written procedures designed to ensure that future discovery violations that lead to sanctions are elevated to senior officers for review and appropriate corrective action.

"NASD is committed to making our arbitration forum faster, fairer, and less expensive than court procedures," said Robert Glauber, NASD Chairman and CEO. "We cannot deliver on this commitment if firms fail to produce all required documents in a timely manner to opposing parties. We will not tolerate any failure by NASD-regulated firms to cooperate fully in the arbitration process and we will bring enforcement actions as necessary to assure full compliance with our arbitration code."

These cases arise from arbitrations conducted before NASD Dispute Resolution, Inc. arbitration panels as well as arbitration panels sponsored by other regulatory forums. Citigroup was a party in six of the arbitrations. Merrill Lynch and Morgan Stanley were parties in seven arbitrations each.

In these arbitrations, arbitration panels cited the firms for failing to produce documents to the claimants, as required by rules involving document discovery. After finding in each of the arbitrations that the firms failed to fully comply with their discovery obligations to produce documents—even after arbitration panels had issued orders compelling that production—the panels sanctioned the firms in amounts as high as \$52,000.

As recently as last year, NASD formally reminded firms that "NASD rules require parties to NASD arbitrations to cooperate in the voluntary exchange of documents and information, and to respond to discovery requests from other parties" in a timely manner. NASD's *Notice to Members 03-70* pointed out that it had become clear that "despite the guidance provided in the

Code and the Discovery Guide, NASD continues to receive complaints regarding possible abuses of the discovery process."

The Notice further stated that "some parties believe that noncompliance with their duty to cooperate in the discovery process—to voluntarily turn over documents listed on applicable Document Production Lists, or requested by other parties under Rule 10321—is a routine and acceptable part of arbitration strategy."

In the cases announced today, NASD found that by failing to comply with their discovery obligations, each of the firms violated NASD's rule requiring that securities firms adhere to just and equitable principles of trade. NASD also found that in arbitrations conducted before NASD Dispute Resolution, each of the firms violated NASD's Code of Arbitration Procedure, which provides that a failure to produce any document pursuant to the provisions of the Code is deemed a violation of the just and equitable principles of trade.

As part of today's settlements, each firm has agreed to establish a written procedure requiring review, at the management level of the firm, of any instance where an arbitration panel has sanctioned the firm for discovery violations and of instances where the firm is required to produce documents in response to a motion to compel filed in an arbitration. Each firm also agreed to notify all counsel handling arbitration proceedings on its behalf of the firm's policy to comply with discovery requirements in arbitration proceedings.

Citigroup, Merrill Lynch, and Morgan Stanley agreed to the sanctions while neither admitting nor denying the allegations.

### **NASD Fines Piper Jaffray \$2.4 Million for IPO Spinning**

#### ***Corporate Executives Favored in Bid for Investment Banking Business***

NASD censured and fined Piper Jaffray & Co. \$2.4 million for engaging in improper spinning of hot initial public offerings (IPOs). Piper Jaffray violated NASD rules by allocating and selling profitable hot IPOs to executives of corporations from which Piper Jaffray was seeking, or had obtained, investment banking business.

During 1999 through 2001, Piper Jaffray improperly allocated and sold shares of these hot IPOs to 22 corporate executives, primarily CEOs and CFOs of public companies. None of these executives did any personal business with Piper Jaffray during the relevant period. The only activity in each executive's account was the purchase and sale of hot IPO shares. Each individual was a key executive officer (or spouse) of an existing or potential Piper Jaffray investment banking client and was in a position to

influence the selection of the investment banker for their employer.

Piper Jaffray earned over \$16 million dollars from these issuers, while the 22 key executives made a total of approximately \$2.4 million in profits from the hot IPO shares. Individual profits ranged from \$9,000 to approximately \$242,000. Each executive was allocated at least five hot IPOs, with some executives receiving as many as 20.

"Spinning contributes to the public's perception that the IPO market is rigged in favor of company insiders who receive highly profitable IPO shares as a payoff for lucrative investment banking business," said NASD Vice Chairman Mary L. Schapiro. "NASD is committed to an IPO allocation process that is transparent and fair."

Sales of hot IPO shares to corporate executives were made by Piper Jaffray's Corporate Client Services (CCS) desk, a function within Piper's Investment Banking Department. The head of Piper Jaffray's Investment Banking Department determined the annual bonuses and salaries of CCS employees, and discretionary bonus payments to CCS employees and investment bankers were made from one bonus pool. CCS made it clear, both within the company and to clients, that its role was to add value to the investment banking operation. As one CCS employee wrote in a May 2001 e-mail to a client: "We are not part of our retail business. We are part of Piper Jaffray's Equity Capital Market Group. This is unique to the Street."

Piper Jaffray's investment bankers identified certain corporate executives to CCS for hot IPO allocations, and, in some instances, gave direction on the number of shares the executives should receive. In making allocation decisions, CCS asked investment bankers to rank company executives in order of priority. The ranking of key executives for the allocation of hot IPOs was accomplished in several different ways. For example, a CCS relationship manager sent a list of individuals to an investment banker, asking him to add executives as necessary and "put in a ranking number." The CCS manager suggested that the investment banker use the following ranking system that was used by other investment bankers:

1. *Very important*
2. *Somewhat important*
3. *[G]et him about 4 deals a year*
0. *No stock for you*

Piper Jaffray made numerous allocations to key executives. For example, Piper Jaffray sold shares to the CFO of Liquid Audio on numerous occasions prior to Liquid Audio's IPO and its secondary offering five months later. The CFO made over \$92,000 in profits

from his IPO sales. Piper earned over \$764,000 as co-manager of Liquid Audio's IPO and more than \$703,000 as co-manager of Liquid Audio's secondary offering.

Piper Jaffray also allocated hot IPO shares to three executives of Go America—the CEO, the CFO, and an EVP—shortly after being selected to co-manage that company's IPO. These three individuals collectively made over \$330,000 in profits. At the same time, the investment banking transaction by Go America generated over \$1.1 million in investment banking fees for Piper Jaffray.

In settling this matter, Piper Jaffray & Co. neither admitted nor denied the charges.

## **NASD Charges Florida Discount Securities with Fraud**

### ***High-Pressure, Boiler-Room Sales Practices Cost Investors more than \$4.5 Million***

NASD announced charges against Florida Discount Securities, Inc., formally of Boca Raton, FL, its former President and owner, Bruce Rich, and eight brokers with engaging in high-pressure, boiler-room type sales practices that defrauded investors more than \$4.5 million.

NASD charged that, from the spring of 2001 through the fall of 2002, Rich and eight Florida Discount brokers engaged in a variety of fraudulent and manipulative sales practices in soliciting customers to purchase shares of two highly speculative securities, Combined Professional Services, Inc. (CPFS) and BSD Software, Inc. (BSDS). Both CPFS and BSDS were non-operational "shell" or "blank check" companies with no operating histories, no significant financial resources, minimal assets, and no operating income or revenues. Each company's plan was to seek a business it could acquire or with which it could merge. Neither company ever identified a prospective target business.

NASD's Complaint charges that under Rich's direction, Florida Discount became a "boiler room" that sold CPFS and BSDS common stock through an aggressive cold-calling campaign that involved high-pressure sales tactics; misrepresentations and omissions of material facts; failing to disclose adverse information about the risks of investing in CPFS and BSDS and their bleak business prospects; making baseless optimistic predictions about the companies' future business prospects and the value of their securities; making unauthorized transactions in customers' accounts; engaging in a "no net-selling" practice in which brokers refused to take customer sell orders, delayed taking sell orders, and attempted to persuade customers not to sell; and deceived customers into believing that Florida Discount had an investment banking department and investment banking relationships with CPFS and BSDS.



The Florida Discount brokers (identified by their Central Registration Depository numbers) charged with participating in the illegal scheme are: Dante F. Calicchio (CRD No. 2812117); Charles P. Celestin (CRD No. 4276880); Mark W. Eshleman (CRD No. CRD No. 1244069); Fernando Fernandez (CRD No. CRD No. 4008751); Adam T. Forman (CRD No. 2826964); Marc S. Kimmel (CRD No. 2805550); Shannon L. Norris (CRD No. 2983568); and Kristian F. Sierp (CRD No. 2428092).

NASD's Complaint also charges Florida Discount and Rich (CRD No. 2005846) with supervisory failures, which contributed to violations of NASD Rules and federal securities laws.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution.